

This letter discusses liability for Hotel Operators' Occupation Tax and Retailers' Occupation Tax in regard to students attending summer camp programs provided by a college or other school for which they receive credit or some other recognition of completion. See 86 Ill. Adm. Code Sections 480.101 and 130.2005. (This is a GIL.)

December 29, 2005

Dear Xxxxx:

This letter is in response to your letter dated September 6, 2005, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at [www.ILTAX.com](http://www.ILTAX.com) to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

This is a request for a General Information Letter pursuant to the provisions of 2 Ill. Admin. Code 1200. The UNIVERSITY is seeking assurance from the Illinois Department of Revenue that the Illinois Hotel Operators' Occupation Tax does not apply to the gross receipts that a facility receives for lodging and the Retailers' Occupation Tax does not apply to the gross receipts received for meals provided to persons attending summer camps at the University's campus.

The University is among the preeminent public universities of the nation and is a world leader in research, teaching, and public engagement, distinguished by the breadth of its programs, broad academic excellence, and internationally renowned faculty.

As part of its programs for education and public service, the University conducts summer programs, which involve youth of various ages. These programs may involve athletics, the arts, or other courses with traditional academic content. The typical program is in the form of a summer camp where the participants are given the opportunity to learn and participate with others who share a particular interest in the subject or activity.

These programs are sponsored or co-sponsored by the University, use University facilities and services, and result in achievements recognized by the University or co-sponsoring authorities. The recognition is usually in the form of a certificate of participation. None of these programs provide University course hours to the participants.

Various programs include instruction, career experience, and exposure to fields of study. In order to provide the experience with a broader range of participants and for a more inclusive interaction with fellow students, the University provides lodging and meals to participants to some or all of the participants in the programs if needed. At the present time, the University treats the lodging as subject to the Hotel Operators' Occupation Tax and the meals furnished as subject to the Retailers' Occupation Tax.

In 2005, approximately 4,000 children attended sports camps offered through the Division of Intercollegiate Athletics. About 1,200 musicians and thespians used University stages and rehearsal halls as participants in Illinois Summer camps. In addition to athletics and music, there were several youth camps for academic improvement and career experience.

The University provides a package that includes the fee for the activity (camp), a noon meal for commuters, and lodging and a full meal schedule for overnight campers. Meals are provided by University food service personnel in a college cafeteria. The University provided overnight accommodations for approximately 3,600 campers in the 2005 summer.

The length of the programs varies from a long weekend to a few weeks.

## **LAW**

1. The Illinois Hotel Operators' Occupation Tax, 35 ILCS 145/2 imposes tax upon persons engaged in the occupation of renting of sleeping rooms to the public. It excludes permanent residents, defined as any person who occupied or has the right to occupy any room or rooms, regardless of whether or not it is the same room or not for a period of 30 days or more.

2. The Department's Regulation 86 Ill. Admin. Code, § 480.101(b)(4), set forth below, recognizes that the renting of rooms to students enrolled in courses is not the renting of rooms to the public.

'There is no exemption simply because the lessor of the rooms is a nonprofit organization, such as a church, charity or school. However, a college or other school is not subject to the tax on its receipts from renting rooms to its students for use as living quarters or for sleeping or housekeeping accommodations because this is not the renting of the rooms to the 'public'. Nevertheless, if the school rents rooms for such purposes to persons who are not enrolled with the school in courses of study for credit, such renting is not being done to students, but is being done to the 'public', and the school incurs Hotel Operators' Occupation Tax liability on its rental receipts from this activity, if such lessees do not qualify as permanent residents.'

3. Similarly the Department's Regulation, 86 Ill. Admin. Code § 130.2005 (b)(4)(A) states that schools do not incur tax on sales of meals to students in closed cafeterias.

## '(b)(4) Special Problems Concerning Sales by Schools

### A) Dining Facilities

A school does not incur Retailers' Occupation Tax liability on its operation of a cafeteria or other dining facility which is conducted on the school's premises, and which confines its selling to the students and employees of the school. In any instance in which the dining facility is opened up for the use of other persons, all sales that are made at such facility while that condition continues to prevail are taxable.'

4. *Northwestern University v City of Evanston*, 221 Ill App 3d 893 (1991) The appellate court held that the Municipal Hotel Operators' Occupation Tax did not apply to the rental of rooms to students enrolled in courses at the university.

5. PLR ST 01-0023 June 25, 2001. Persons attending summer camps conducted by the University are 'enrolled in courses of study for credit' if some form of credit or other recognition of completion is granted by the University for completion of those classes or programs. The providing of lodging to those persons would not be considered rentals to the public.

Similar to the Hotel Operators' Occupation Tax analysis described above, the provision of food in a dormitory setting to persons who are 'enrolled in courses of study for credit' with the University is sales of food to students and not subject to the Retailers' Occupation Tax.

6. GIL ST-0038, February 20, 2002. The same result was reached as in PLR ST 01-0023 June 25, 2001.

### Taxpayer's Position

**Lodging Provided to Participants is not subject to tax.** The University does not believe that the University is engaged in the occupation of renting rooms to the public and, therefore, is not subject to the tax imposed by the Hotel Operators' Occupation Tax. The participants in summer camps are enrolled in University programs and credit or other recognition is granted upon completion. Therefore, the UNIVERSITY campus lodging provided to participants is not considered rentals to the public.

**Meals provided to students by schools in cafeterias 'closed to the public' are not subject to tax.** The University believes that the meals provided to the participants attending these summer camps at the UNIVERSITY are exempt from the Retailers' Occupation Tax.

Participants attending the camps and utilizing the UNIVERSITY lodging are considered University students. The participants who utilize such lodging facilities are individually billed for training, lodging, and meals as a package. Participants who do not utilize such lodging facilities are individually billed for training and meals as a package. The meals are served in a dormitory food service that is not available to the public. It is not necessary to individually identify taxable and nontaxable diners at the time they order meals as a flat rate is charged for the meals and the tax status of the diner is

established at the time of registration. Participants eating at the facility do not and cannot pay for meals at the cafeteria.

This system is similar to the meal charge arrangements for students at the University during the regular school year where a lump-sum is charged for meals on a per semester basis.

### **Ruling Requested**

The University requests confirmation that the Illinois Hotel Operators' Occupation Tax does not apply to the gross receipts that a facility has received for lodging provided to students attending summer training camps at the University's campus. The University also requests confirmation that the Retailers' Occupation Tax does not apply to the gross receipts received from meals provided to students attending summer training camps at the University's campus.

### **DEPARTMENT'S RESPONSE**

We are unable to give you the ruling you have requested in a General Information Letter. However, we hope the following information is useful.

The Department's letters, PLR ST 01-0023 and GIL ST-02-0038, are still correct. As provided for in 86 Ill. Adm. Code 480.101(b)(4), rentals of rooms or apartments to persons who are not currently enrolled with a college or other school in courses of study for credit are considered rentals to the public at large and are subject to Hotel Operator's Occupation Tax liability. However, the Department will consider persons to be enrolled in courses of study for credit with a college or other school if those persons are attending classes or programs that are held by a college or other school (not some other organization), and if some form of credit or other recognition of completion is granted by that college or other school for completion of those classes or programs. As a result, Hotel Operators' Occupation Tax does not apply to the gross receipts that a college or other school facility receives for lodging provided to students attending summer training camps at the college or other school's campus, so long as those students receive some form of credit or other recognition of completion by that college or other school. Rentals to organizations or individuals who are attending programs put on by an organization other than a college or other school would be considered rentals to the public and be subject to Hotels Operators' Occupation Tax liability.

A college or other school does not incur Retailers' Occupation Tax liability on its operation of a cafeteria or other dining facility that is conducted on the school's premises and that confines its selling to the students and employees of that school. This includes students in summer training camps conducted by the college or other school so long as those students receive some form of credit or other recognition of completion by that college or other school for completion of those classes or programs. If the dining facility is opened up for the use of other persons, all sales that are made at such facility are subject to Retailers' Occupation Tax liability. See 86 Ill. Adm. Code 130.2005(b)(4). In a school or college campus setting, this means that sales of meals in a closed dormitory cafeteria are exempt from sales tax but all food sales in a student union type setting, including sales to students are taxable.

Please note that if lodging is provided by a school to attendees at meetings or conferences that are conducted by third parties and the persons attending those meetings or conferences eat at the school's cafeteria or dining facility, the school's cafeteria or dining facility is considered to be open

to the public and generally all sales that are made at such a facility are subject to Retailers' Occupation Tax. Programs that are co-sponsored by the University and a third party organization but from which students receive credit or recognition of completion from the third party only are treated as programs provided by third parties.

If the dining facility provides food to both students of the training facility and attendees at meetings or conferences that are conducted by third parties at the training facility all sales (including sales to students) will generally be taxable since the facility is considered to be open to the public for sales tax purposes. However, if the facility has a mechanism for identifying and documenting, at or before the time of sale, the nontaxable sales of food to students, then the sales of food to those students will not be subject to Retailers' Occupation Tax liability. In such cases, sales to attendees at meetings or conferences that are conducted by third parties at the training facility will remain subject to tax.

I hope this information is helpful. If you require additional information, please visit our website at [www.ILTAX.com](http://www.ILTAX.com) or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

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Associate Counsel

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